

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Marathon Petroleum Company LLC)	
)	
Request for Waiver of 900 MHz Application)	FCC File No. 0004226938
Filing Freeze)	
)	
and)	
)	
Application for Authority To Operate a 900 MHz)	
Trunked Communications System in Catlettsburg,)	
Kentucky)	

ORDER

Adopted: December 20, 2010

Released: December 20, 2010

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We address a request for waiver filed by Marathon Petroleum Company LLC (Marathon),¹ which seeks a waiver of the application freeze² prohibiting the filing of applications for new authorizations in the 900 MHz Business Industrial Land Transportation (B/ILT) band. Marathon requests the waiver to permit processing and grant of an application for frequencies it previously used under call sign WPJY949 in the Catlettsburg, Kentucky area. For the reasons stated below, we grant the request for waiver and grant Marathon's application.

2. *Background.* Call sign WPJY949 was authorized for use by Marathon and its predecessors-in-interest in 1996.³ The frequencies were used at Marathon's Catlettsburg refinery in northeastern Kentucky, which processes a range of sweet and sour crude oils into such products as

¹ See FCC File No. 0004226938, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization (filed Apr. 28, 2010) (Waiver Request). Marathon has been operating under special temporary authority (STA) on the same frequencies for which it was authorized under call sign WPJY949; see File No. 0003508918 (filed Jul. 18, 2008); *renewed (most recently)*, File No. 0004509115 (filed Nov. 24, 2010).

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 20 FCC Rcd 3814 (WTB 2005) (*900 MHz B/ILT NPRM*); Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62, *Report and Order*, 23 FCC Rcd 15856 (WTB 2008) (*900 MHz B/ILT R&O*) (*recon. pending*).

³ See Waiver Request at 1.

gasoline, propylene, asphalt, diesel, jet fuel, propane, and other petrochemicals.⁴ According to Marathon, the authorization for call sign WPJY949 expired in 2001.⁵

3. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on applications for new 900 MHz B/ILT authorizations because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.⁶ The Bureau stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.⁷ The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.⁸

4. In June 2008, Marathon realized the authorization for call sign WPJY949 had expired several years earlier, and notified the Commission of its (Marathon's) unauthorized use of the associated frequencies. Pursuant to that notification, the Commission and Marathon entered into a consent decree requiring Marathon to remit a payment to the U.S. Treasury and implement a Compliance Plan.⁹ At the same time, Marathon submitted a request to operate, under special temporary authority, on the same frequencies as had been authorized under call sign WPJY949.¹⁰ On April 28, 2010, Marathon filed the instant application and waiver request, to permit it to file for "regular" authorization to use the same frequencies (*i.e.*, the frequencies authorized under call sign WPJY949, which it had been using since 1996, and since July 2008, under STA).

5. In October 2008, the Commission released a report and order that lifts the freeze on the filing of applications for new authorizations in the 900 MHz B/ILT band on a rolling basis. Specifically, the removal of the freeze is tied to the completion of rebanding in each 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region.¹¹

6. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ We conclude that Marathon has demonstrated that its waiver request would not frustrate the underlying purpose of the freeze.

⁴ *Id.*

⁵ *Id.*

⁶ See 900 MHz Freeze PN, 19 FCC Rcd at 18277-78.

⁷ *Id.* at 18278 n.7.

⁸ See 900 MHz B/ILT NPRM, 20 FCC Rcd at 3836 ¶ 67.

⁹ See Waiver Request at 1; see also In the Matter of Marathon Petroleum Company LLC, *Order*, 25 FCC Rcd 1 (EB 2010).

¹⁰ See Waiver Request at 1.

¹¹ See 900 MHz B/ILT R&O, 23 FCC Rcd at 15872-73 ¶¶ 27-31.

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

7. A significant purpose of the 900 MHz B/ILT application freeze has been to preserve adequate spectrum resources during the 800 MHz band reconfiguration. While the Commission has determined to retain the current site-based licensing paradigm for 900 MHz B/ILT channels and has indicated its intention to lift the freeze, the freeze on new applications for 900 MHz B/ILT authorizations remains in effect in those NPSPAC regions that have not completed 800 MHz rebanding.¹⁴

8. Marathon acknowledges that the freeze has not yet been lifted in the NPSPAC region in which Catlettsburg is located, and thus Marathon is otherwise estopped from filing an application for a new authorization.¹⁵ In support of its position that the underlying purpose of the rule (here, preservation of sufficient spectrum to facilitate 800 MHz rebanding) would not be frustrated by grant of the waiver, Marathon notes that the frequencies for which it seeks regular authorization have, essentially, been encumbered since 1996 (*i.e.*, during the life of call sign WPJY949; during Marathon's use through mid-2008; and since July 2008, under STA).¹⁶ Marathon includes a letter from Sprint Nextel indicating that it (Sprint Nextel) no longer needs unencumbered 900 MHz spectrum in the relevant NPSPAC region to effectuate its rebanding efforts, and certifies that Marathon's proposed operations would have no negative impact on Sprint Nextel's operations on the 800 MHz band reconfiguration.¹⁷

9. Marathon asserts that grant of the requested waiver is in the public interest, since its communications system is critical to the safe and effective operation of the Catlettsburg refinery.¹⁸ In particular, according to Marathon, grant of the waiver and the associated application would allow it, over the course of the ten-year license term, to invest in updated and more reliable technology and equipment, which in turn will promote the safety of Marathon's employees, the public, and the surrounding environment.¹⁹ Marathon concludes that the waiver is warranted, as it has no reasonable alternatives; specifically, a search by frequency coordinator the Utilities Telecom Council found that Marathon's best, perhaps only, option for a mobile communications system sufficient to serve its Catlettsburg refinery area is in the 900 MHz band, principally on the frequencies it has encumbered since 1996.²⁰

10. As noted above, Marathon was licensed for call sign WPJY949 until that license terminated. Thus, Marathon was authorized to operate on the frequencies at issue prior to the Commission's decision to institute the 900 MHz B/ILT application freeze. Moreover, Marathon continued to operate on those frequencies even after the license expired. Marathon does not appear to seek to modify any of its formerly licensed channels. Because grant of the underlying application will restore the channels and the exact operating parameters of the previous authorizations, both regular and STA, and because Sprint Nextel has indicated that Marathon's use of the frequencies will not adversely impact Sprint Nextel's rebanding efforts, we believe that grant of this waiver and our processing of the related application will not interfere with any spectrum needs associated with the 800 MHz proceeding. Given that Marathon was an established 900 MHz B/ILT licensee before the 800 MHz reconfiguration decision, it would not have been affected by the application freeze had it filed a timely renewal

¹⁴ See *900 MHz B/ILT R&O*, 25 FCC Rcd at 15872 ¶¶ 27-29. To date, the Commission has not yet announced that it has completed 800 MHz rebanding in any NPSPAC region.

¹⁵ See Waiver Request at 2.

¹⁶ *Id.* at 2-3.

¹⁷ See Waiver Request, Exhibit A, Letter from Robin J. Cohen, Senior Manager, Regulatory Affairs, Sprint Nextel Corporation, to Wireless Telecommunications Bureau (dated Apr. 19, 2010).

¹⁸ See Waiver Request at 3.

¹⁹ See *id.*

²⁰ *Id.*

application. Thus, grant of the waiver will not interfere with the purpose of the 900 MHz B/ILT application freeze.²¹

11. We also conclude that grant of the waiver request serves the public interest. The waiver permits the processing of an application that seeks to preserve a vital radio communications system that is used continually by Marathon in a refinery where jet fuel, gasoline, and other combustible products are made. Grant of the waiver is important for the continued safe operation of Marathon's Catlettsburg refinery, as well as the surrounding northeastern Kentucky community.

12. *Ordering Clauses.* For the aforementioned reasons, we grant Marathon's request for waiver of the 900 MHz B/ILT application freeze and we permit the processing of its application. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Marathon Petroleum Company LLC on April 28, 2010, FCC File No. 0004226938, IS GRANTED.

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, that application FCC File No. 0004226938 IS GRANTED.

14. This action is taken under delegated authority pursuant to Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

²¹ See, e.g., Disneyland Resort, *Order*, 21 FCC Rcd 536 (WTB 2006); Georgia Pacific Corporation, *Order*, 21 FCC Rcd 15077 (WTB 2006); Hyatt Corporation d/b/a/ Hyatt Regency Atlanta, *Order*, 22 FCC Rcd 734 (WTB 2007); Cam Jo Inc. DBA Clearwater Yellow Cab Pascot & Tarpon Springs, *Order*, 22 FCC Rcd 3843 (WTB 2007).